

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- : S14 11 Cr. 1091 (VM)

PETER LESNIEWSKI, :

MARIE BARAN, and :

JOSEPH RUTIGLIANO, :

Defendants. :

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**GOVERNMENT'S PROPOSED
EXAMINATION OF PROSPECTIVE JURORS**

The United States respectfully requests that the Court include the following in its *voir dire* of prospective jurors pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure.

Introduction

We are about to select from among you the jurors who will sit in this case. Both sides are entitled to know something about the people who sit as jurors. The law provides this procedure to insure that both the Government and the defendants receive the fairest possible trial. For this reason, I am going to ask you certain questions. They are not meant to pry unnecessarily into your personal life, but only to elicit the basic information necessary to permit the parties and the Court to make an informed choice of jurors for the case. If

your answer to one of my questions concerns private information, please let me know and we can discuss it out of the hearing of the other potential jurors.

The Charges

1. Before I begin, let me tell you a little bit about the case. This is a criminal case. The defendants have been charged with violating certain provisions of the criminal laws of the United States. Those charges are contained in an Indictment that was voted by a Grand Jury. The Indictment is not evidence itself; instead, it is merely a document that contains certain charges that the Government is required to prove beyond a reasonable doubt.

2. There are three defendants named in the Indictment, PETER LESNIEWSKI, MARIE BARAN and JOSEPH RUTIGLIANO.

3. There are six types of charges contained in the Indictment. Specifically, the Indictment charges: first, that the defendants knowingly and willfully engaged in a conspiracy, or illegal agreement, to commit three different types of fraud - mail fraud, wire fraud and healthcare fraud; second that the defendants knowingly and willfully engaged in a conspiracy to defraud the United States, namely, the United States Railroad Retirement Board or "RRB"; third, that all of the defendants committed health care fraud; fourth, that all of the defendants

committed mail fraud; fifth, that all of the defendants committed wire fraud; and sixth, that one of the defendants, JOSEPH RUTIGLIANO, made a false statement to an agency of the United States, namely, the RRB.

4. In sum, all of the charges relate to allegations that the defendants fraudulently obtained or helped others, specifically Long Island Railroad employees, to fraudulently obtain benefits from the federal government that they were not entitled to receive.

5. Do any of you believe you have personal knowledge of the charges contained in the Indictment as I have described it? Have you heard anything about this case, in the newspaper, on the radio, on the internet, on television, or from others? *[If answer is "Yes," the Court is respectfully asked to inquire, at the bench or in the robing room, about the extent and basis of knowledge, and whether that knowledge would affect impartiality.]*

The Parties

6. There are three defendants in this case, PETER LESNIEWSKI, MARIE BARAN and JOSEPH RUTIGLIANO. *[Please ask the defendants to rise as they are identified.]* Does any juror know, or has any juror had any dealings, directly, or indirectly, with, any of the defendants named in the Indictment?

7. To your knowledge, do any of your relatives, friends, associates, or employers know the defendants?

8. The defendant PETER LESNIEWSKI is represented today by Thomas Durkin, Esq. and Joshua Dratel, Esq. Do any of you know these attorneys?

9. The defendant MARIE BARAN is represented today by Joey Jackson, Esq. Do any of you know this attorney?

10. The defendant JOSEPH RUTIGLIANO is represented today by Joseph Ryan, Esq. Do any of you know this attorney?

11. The United States is represented in this case, as in all cases, by the United States Attorney for this District, who is Preet Bharara. Actually appearing in this case will be Assistant United States Attorneys Justin S. Weddle, Nicole Friedlander, Daniel B. Tehrani, and Paralegals Annie Chen and Emma Larson. [*Please ask the Government attorneys and paralegals to stand.*] Does any juror know, or has any juror had any dealings, directly or indirectly, with Mr. Bharara, Mr. Weddle, Ms. Friedlander, Mr. Tehrani, Ms. Chen, Ms. Larson or with any other member of the staff of the United States Attorney's Office for the Southern District of New York, located in Manhattan.

12. The Assistant United States Attorneys will also be assisted in this case by Special Agents Louis Rossignuolo and

Adam Suits of the Office of the Inspector General of the Railroad Retirement Board, known as the RRB-OIG, Special Agent Frank LoMonaco of the Federal Bureau of Investigation, known as the FBI. [*Please ask Special Agents Rossignuolo, Suits and LoMonaco to stand.*] Have you or your family members or close friends had any dealings either directly or indirectly with these Special Agents? The Office of Inspector General of the Rail Road Retirement Board? The Federal Bureau of Investigation?

Other Persons and Entities

13. During the trial, the Government will present evidence in the form of witness testimony. The Government and the defendants expect that the following people may be witnesses or may be mentioned in testimony or exhibits. [*The Government respectfully requests that the Court read the Government and defense witness lists that were provided, together with a list of individuals likely to be mentioned.*] Do any of you know any of the people I have just named?

14. Certain of the matters that are likely to be the focus of the trial involved the Long Island Railroad, or LIRR. Have you, your spouse, or close friend or relative ever had any contact with the LIRR, other than as passengers?

15. During the trial, you may also hear the name of a

health insurance company, United Health Care. Have you, your spouse, or close friend or relative ever had any contact with United Health Care?

16. The witnesses in this case may include what are known as accomplice witnesses – a person who has pled guilty to participating in one or more of the crimes charged in the Indictment. It is the law in federal courts that the testimony of an accomplice may be enough in itself for conviction, if the jury believes that the testimony establishes guilt beyond a reasonable doubt. Is there anything about the fact that accomplice witnesses will testify in this case that would make you unable to render a fair and impartial verdict?

Relationship with Government

17. Do any of you know, or have any association – professional, business, or social, direct or indirect – with any member of the staff of the United States Attorney's Office for the Southern District of New York? The Railroad Retirement Board or its Office of the Inspector General? The Federal Bureau of Investigation?

18. Has any juror, either through any experience he or she has had or anything he or she has seen or read, developed any bias, prejudice or other feelings for or against the Railroad Retirement Board or its Office of the Inspector

General? For or against the Federal Bureau of Investigation?
For or against the United States Attorney's Office? For or
against any other law enforcement agency?

19. Has any juror, either through any experience he
or she has had or anything he or she has seen or read, developed
any bias, prejudice or other feelings for or against unions?

20. Have you, or has any member of your family,
either as an individual, or in the course of business, ever been
a party to any legal action or dispute with the United States,
or with any of the officers, departments, agencies, or employees
of the United States? Have any of you had any legal, financial
or other interest in any such legal action or dispute, or its
outcome?

21. Do any of you believe that the federal government
should not require people to provide truthful information on
income tax returns?

Prior Jury Service

22. Have you ever at any time served as a member of a
grand jury, whether in the federal, state or county courts?

23. Have you ever served as a juror in either the
state or federal courts?

(a) If so, when and in what court did you serve?
What type of case?

(b) Without telling us what the verdict was, did the jury reach a verdict?

(c) Was there anything about that experience that would impact on your ability to sit as a fair and impartial juror in this case?

Experience as a Witness, Defendant, or Crime Victim

24. Have any of you, or any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a Congressional or state legislative committee, licensing authority, or governmental agency? Have you, or any of those close to you, ever been questioned in any matter by a federal, state, or local law enforcement agency?

25. Have you ever been a witness or a complainant in any federal prosecution or state prosecution?

26. Are you, or is any member of your family, now under subpoena or, to your knowledge, about to be subpoenaed in any criminal case?

27. Have you, has any member of your family, any associate, or close friend, ever been charged with a crime? If so, do you believe that those charges were fairly brought?

28. Have you, or have any of your relatives, associates, or close friends ever been the subject of any

investigation or accusation by any federal or state grand jury, or by any congressional committee?

29. Have you, or any of your close friends or relatives, ever been a victim of a crime? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each crime.]*

30. Have you, or any of your close friends or relatives, ever been stopped or questioned by any member of the Federal Bureau of Investigation or other law enforcement agency? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each incident and that prospective juror's reaction to how he or she was treated by law enforcement.]*

Ability to Render a Fair and Impartial Verdict

31. As you can tell, during the trial, you will hear evidence concerning individuals who allegedly conspired unlawfully to obtain, and allegedly did unlawfully obtain, money from the federal government in the form of disability benefits. Does the fact that the charge involves the procurement of disability benefits affect your ability to render a fair verdict?

32. Do any of you believe that it should not be a crime for a person to submit false information in order to obtain money from the federal government?

33. Do any of you believe that the law governing this crime should not be enforced?

34. You will also hear evidence that one or more individuals made false statements on forms submitted to federal government agencies. Do any of you believe that it should not be a crime for a person to make a false statement to an agency of the United States Government, including in income tax returns or other documents?

Law Enforcement Witnesses

35. The Government witnesses in this case will include agents from the Railroad Retirement Board and the Federal Bureau of Investigation. Would any of you be more likely to believe a witness merely because he or she is an agent with the Office of the Inspector General of the Railroad Retirement Board, the Federal Bureau of Investigation or other law enforcement agency? Would any of you be less likely to believe a witness merely because he or she is an agent with the Office of the Inspector General of the Railroad Retirement Board, the Federal Bureau of Investigation or other law enforcement agency?

36. Does anyone have any expectations about the types of evidence that the Government will present in this criminal trial, or in a criminal trial more generally?

37. Would any of you be unable to follow the judge's instructions that the Government is not required to use any particular technique in order to investigate evidence of a crime?

38. Have you ever had an unpleasant experience with any Federal law enforcement officer? [*Positive responses should be handled at sidebar so as not to influence or affect other jurors in venire.*]

Other Questions

39. Do any of you have a problem with your hearing or vision, or any other health problems that would prevent you from giving full attention to this trial?

40. Are any of you taking any medication, or do any of you have any medical condition, that would prevent you from giving full attention to all of the evidence at this trial?

41. Do any of you have any difficulty in reading or understanding English in any degree?

Function of the Court and Jury

42. The function of the jury is to decide questions of fact. You are the sole judge of the facts and nothing that

the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finder. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. In other words, when I give you instructions about the law at the close of this trial, you are required to accept the law as stated and apply it to determine whether or not the defendant is guilty as charged in the Indictment. With this in mind, is there any juror who feels that for any reason he or she is not either willing or able to apply the law as stated by the Court?

43. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether the defendant is guilty or innocent?

44. Will each of you accept the proposition of law that sympathy or empathy must not enter into the deliberations of the jurors as to guilt or innocence of either defendant, and that only the evidence produced here in Court may be used by you to determine the guilt or innocence of either defendant?

45. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established a

defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

46. Do any of you have any religious, philosophical or other beliefs that would make you unable to render a guilty verdict for reasons unrelated to the law and the evidence?

Other Biases

47. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, bias, or prejudice – and according to the law as it will be explained to you?

Juror's Background & Affiliations

48. Please provide the following background information:

(a) How old are you?

(b) What is the county and general section or community of your residence?

(c) What is the highest level of schooling you

have completed?

(d) Who else lives in your home with you, if anyone?

(e) Do you have any children? If so, what are their ages and what do they do?

(f) How long have you lived at your present address? *[If less than five years, please inquire as to prior residence.]*

(g) What is your current employment status? *[If retired, please inquire as to former occupation.]*

(h) *[If employed]*: What is the name of your employer?

(i) What are your position and responsibilities at your job?

(j) How long have you been employed in your current job? *[If present employment is for less than five years, please inquire as to prior employment.]*

(k) *[If married or has domestic partner]*: What is your spouse's or domestic partner's profession, business or occupation? *[If spouse is retired, please inquire as to occupation before retirement.]*

(l) Have you, any member of your family or any close friend ever been employed by any law enforcement agency -

federal, state or local? Would your dealings with this person prevent you from rendering a fair and impartial verdict here?

(m) Have you, any member of your family or any close friend ever been employed by a fire department?

(n) Have you, any member of your family or any close friend ever been employed by a railroad? *[If so: Which railroad? What was your/their job?]*

(o) Have you, any member of your family or any close friend ever been a member of a union? *[If so: Which union?]* A union officer?

(p) Have you, any member of your family or any close friend ever been employed in a medical field? *[If so: In what capacity?]*

(q) Have you, any member of your family or any close friend ever applied for a disability benefit? For worker's compensation? *[If so: For what?]* Did you receive those benefits?

(r) Have you, any member of your family or any close friend ever applied for a retirement pension? A social security pension?

(s) What newspapers, magazines or websites the do you read and how often?

(t) What television programs do you regularly

watch?

Requested Instructions Following Impaneling of the Jury

49. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family, and your friends. If your friends or family ask you about the trial, you may simply tell them that you are a juror in a criminal case and that the judge has instructed you not to discuss it.

50. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should tell that person that you cannot discuss the case and immediately report such an attempt to me through my deputy clerk. In this regard, let me explain to you that the attorneys and the defendants in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

51. Please do not read or watch anything in

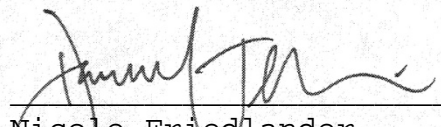
newspapers, television or on the internet that relates to the case or any of its participants in any way. This means no Google searches, or looking anything up on the internet regarding the case or anyone involved in it. Also, my instruction that you cannot discuss the case applies also to instant messages, chats, texts, emails, facebook posts, twitter, blogs, etc. Do not discuss the case at all, and do not write or post anything about the case at all.

Dated: New York, New York
June 24, 2013

Respectfully submitted,

PREET BHARARA
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